

Reserved on 8.10.2021

Delivered on 31.3.2022

Case :- CRIMINAL REVISION No. - 431 of 2000

Revisionist :- Jitendra Kumar

Opposite Party :- Anil Kumar And Another.

Counsel for Revisionist :- Mohd Abid Ali,Atiya Abid

Counsel for Opposite Party :- Govt.Advocate,Bireshwar Nath

Hon'ble Karunesh Singh Pawar,J.

- (1) Heard learned counsel for the revisionist, learned A.G.A. for the State, Shri Bireshwar Nath, learned counsel for respondent no.2 and perused the record.
- (2) This criminal revision has been filed against the judgment and order dated 15.11.2000 passed by IV Additional Sessions Judge, Sultanpur in Criminal Revision No.239 of 1999 in re: *Anil Kumar vs. Jitendra Kumar and others*, whereby learned revisional Court, while setting aside the order dated 23.4.1999 passed by Sub-Divisional Magistrate Kadipur, had remanded the matter back to the Sub-Divisional Magistrate Kadipur to decide afresh on merits.
- (3) The brief facts of the case are that an application dated 13.8.1997 was preferred by the revisionist with the prayer that respondent no.1, Anil Kumar, be restrained in interfering his possession along with other prayers. Upon this application preferred by the revisionist (Jitendra Kumar), learned Sub-Divisional Magistrate Kadipur, vide order dated 14.8.1997,

directed the Station In-charge, Kotwali Nagar, Kadipur to ensure law and order be maintained and do the needful. On 14.8.1997, the respondent, Anil Kumar, also preferred an application under Section 145 Cr.P.C. and 146 Cr.P.C. disputing the possession of revisionist (Jitendra Kumar) and further restraining him not to interfere in his possession along with other prayers. On this application also, direction was issued to the Station In-charge, Police Station Kadipur to conduct enquiry and submit its report within a week. A challani report dated 14.10.1997 was submitted by the police before the learned Sub-Divisional Magistrate Kadipur wherein it was opined that due to dispute of partition, there has been ample tension between both the parties and which can disrupt the peace at any time. After being primarily satisfied, the learned Sub-Divisional Magistrate Kadipur passed an order under Section 145 (1) Cr.P.C. on 27.10.1997 and both the parties were directed to remain present on 12.11.1997 in its Court and file the evidence in support of their claim. On the same date i.e. on 27.10.1997 order under Section 146 (1) Cr.P.C was passed attaching the disputed properties. Under orders of the Sub-Divisional Magistrate Kadipur, the Tehsildar conducted inquiry on the spot and submitted its report dated 2.12.1997. On the basis of such report learned Magistrate vide his order dated 3.12.1997 dropped the proceedings under Section 146(1) Cr.P.C. and provided opportunity to the parties to lead evidence and pleadings in support of their claim. Within few days the

revisionist (Jitendra Kumar) filed an objection before the Sub-Divisional Officer against his preliminary order stating that since there is no possibility of disruption of peace and law and order between the parties, therefore, he may be permitted to withdraw his case. The other party, Anil Kumar (respondent), who was the revisionist before the learned Sessions Judge made a contrary claim by filing his statement on 29.12.1997 and disputed the possession. Learned Sub-Divisional Magistrate Kadipur, after hearing the parties and perusal of the record, dropped the proceedings under Section 145 Cr.P.C. while giving a finding that there is no likelihood of disruption of peace as the first party, namely, Jitendra Kumar (revisionist) himself has prayed that there is no likelihood of disruption of peace and since Jitendra Kumar (revisionist) is first party in the case and himself does not want to pursue the case and it will not be proper to proceed with the case only at the instance of the other party and thus has dropped the proceedings vide order dated 23.4.1999.

- (4) The aforesaid order dated 23.04.1999 was assailed before the learned IV Additional Sessions Judge, Sultanpur by filing Criminal Revision No.239 of 1999. After hearing the parties and going through the record, learned revisional Court was of the opinion that merely by saying that in such a case the parties are not plaintiff and defendant, it is the duty of the Magistrate to see that regarding the disputed land, there is no likelihood of

disruption of peace and law and order and therefore only by saying that it is a right of the first party to withdraw the proceedings or drop the proceedings whether the proceedings should be continued or not is not justified. He has also discussed the pending Writ Petition No. 1926 of 1994 wherein an interim order dated 30.11.1995 was passed by which Shri Jai Karan Lal father of Anil Kumar has been restrained not to sale or alienate the property. He further opined that in this order it is not mentioned as to who is in the possession of the property in question and therefore by taking shelter of the order passed by the High Court, learned Magistrate was not absolved of his liability to decide the matter on merit and thus has set aside the order dated 23.4.1999 and directed the learned Magistrate to pass a fresh order after hearing the parties on merits.

- (5) In view of the aforesaid facts two question arises for determination. First, whether the order of the learned Sub-Divisional Officer dated 23.4.1999 withdrawing the proceedings/dropping the proceedings at the instance of one party was correct; and second, the effect of pending suit/consolidation proceedings upon the on-going 145 Cr.P.C. proceedings.
- (6) The Full Bench of this court reported in **AIR 1959 All 141, Ganga Bux Singh vs. Sukhdin** has settled the first point. It has been held that the proceedings under Section 145 Cr.P.C. are

only in the interest of the maintenance of peace and not in the interest of the preservation of the rights of any party. It was further held that the proceedings under Section 145 of the Code of Criminal Procedure are materially different from the proceedings in a proper suit. The parties are not entitled under the law to a decision of the dispute. It is within the discretion of the Magistrate to take action or not and he may come to a decision or may express his inability to decide the matter. The question which is to be decided under Section 145 Cr.P.C. is not *inter se* between the parties to the dispute rather Magistrate is only concentrating on the question whether this dispute is likely to cause breach of peace or not. The parties in the proceedings under Section 145 Cr.P.C. are not in the role of plaintiff/defendant in a civil suit and the proceedings are initiated not on the application of any party but from the movement the subjective satisfaction under Section 145 Cr.P.C. is recorded by the Magistrate. The relevant parts of the aforesaid judgment is extracted below:-

"12. Section 145 (1) does not specifically mention any petition. The Magistrate has to be satisfied from a 'police report' or 'other information'. That 'information' may be an application by an interested party or a third party or even the Magistrate's personal information. The information may have been communicated to him in writing or orally or he may have even noticed some conduct of a party which might have given him an indication of an apprehension of a breach of the peace.

It would thus appear that no application is, strictly speaking, necessary for the initiation of the proceedings. It is not that a party comes to the

Magistrate with a cause. The starting point of an application or even a police report may not be available in every case and thus when the Magistrate, himself suspecting an apprehension of a breach of the peace, makes certain enquiry and is then satisfied of the existence of the apprehension of a breach of the peace and makes an order in writing stating the grounds of his being satisfied, the date of his order cannot be referred back to the first information received by him.

From this it is clear that the starting point of the proceedings is not the information received by the Magistrate or the application made to him or even the police report but his satisfaction recorded in writing. Subha Rao C., J. in Pddmaraju Subba Raju v. Padmaraju Koneti Raju (F) (supra) emphasised the same point and stated:

"Though it often happens that a Magistrate is moved by an application by the affected party, a preliminary enquiry also need not be at the instance of a particular party. The Magistrate may initiate it suo motu. Even if he initiates it at the instance of an affected party, he may drop it if he is not satisfied that the necessary conditions exist."

12a. The proceedings start not on the complaint or the police report but on the subjective satisfaction of the Magistrate that a dispute likely to cause a breach of the peace exists. The crucial date in all the sub-sections is the date of the Magistrate's recording his satisfaction.

That is the date on which the possession of parties has to be enquired into and that is also the date from which the period of two months mentioned in the first proviso to Sub-section (4) of Section 145, Criminal Procedure Code has to be counted. Thus it is clear that the Legislature clearly intended that this date should be treated as the date of the initiation of the proceedings and not the date of the original first information given to the Magistrate. In the circumstances it is difficult to apply the argument of casus omissus which was accepted by the High Court of Hyderabad.

13. From the nature of the provisions it is clear that the Magistrate has been given this power primarily to preserve peace. The individual rights are affected only incidentally.

The nature of the enquiry is quasi civil. It is an incursion by the criminal court in the jurisdiction of the civil court. It is, therefore, necessary that

this incursion should be carefully circumscribed to the extent absolutely necessary discharging the function laid on the Magistrate of preserving the peace. The provisions of Section 145, Code of Criminal Procedure make that amply clear.

The Magistrate does not enquire into the merits of the claims of the parties or even their right to possess the subject of the dispute. He is only concerned with the question as to who was in actual physical possession on the relevant date. This also indicates that the starting point of the proceedings) must be the date when he was satisfied that an apprehension of a breach of the peace existed and not when he received the first information.

...

We need not emphasise that the provisions of tile section clearly indicate that the parties, though they may inform the Magistrate, are not entitled under the law to a decision of the dispute. It is within the discretion of the Magistrate to take action or not and he may come to a decision or may express his inability to decide the matter. Thus the proceedings under Section 145, Code of Criminal Procedure are materially different from the proceedings in a proper suit....

The proviso itself does not vest any right in the party interested. This being a discretionary provision it is only just and proper that the discretion should be circumscribed, within narrow limits and once circumscribed, the limits have to be strictly ob-served. The Legislature in its wisdom vested only a limited discretion and we can see no reason for further extending the period for the exercise of this discretion by deeming that the preliminary order was passed on the date of the original application.

We respectfully agree with those observations. We have already pointed out that the Court was not bound to take action on the application and that as the petitioner was not entitled to any orders the Court's failure to pass an order under Section 145 (1) of the Code of Criminal Procedure did not in fact occasion any prejudice.

The petitioner was not entitled to any order. In these circumstances we respectfully agree with the view expressed in the Andhra case and with great respect cannot agree with the views expressed by the learned Judges in the Madras decision. The

proceedings being only in the interest of the maintenance of peace and not in the interest of the preservation of the rights of any party, the application of equitable principles referred to does not appear to us to be justified.

When a Magistrate starts proceedings under Section 145 Cr. P. C., he does not do so to decide any question 'inter se' between the parties to the dispute, but he is only concentrating on the question whether this dispute is likely to cause a breach of the peace or not. A party to a proceeding under Section 145 Cr. P. C. is not in the position of a plaintiff in a civil suit and it has no right that the Magistrate must give a decision upon the question of possession. It is in this background that we should interpret the language of Section 145(4) Cr. P. C.

...

I have no doubt in my mind that the legislature intended that the Magistrate should initiate these proceedings only after he had reached this subjective satisfaction. If it were not so, every dispossessed person will try to seek a quick remedy by approaching the criminal courts. The Magistrate's jurisdiction starts only after he is satisfied that the dispute is one which is likely to lead to a breach of the public peace. Obviously the Magistrate cannot be satisfied on the allegations of a party alone.

.....

It was, therefore, accepted in this decision that the satisfaction of the Magistrate must precede the passing of the preliminary order and after this satisfaction is reached then there should be no lapse of time between reaching such satisfaction and passing the preliminary order."

- (7) In view of the aforesaid Full Bench judgement of this Court, it is clear that the parties before the Magistrate under Section 145 Cr.P.C. are not in a position of plaintiff or defendant; there is no first party or the second party; they do not have any right upon the adjudication of the dispute; the proceedings under Section 145 Cr.P.C. starts with the subjective satisfaction of the

Magistrate; accordingly no party has right to give an application for withdrawal of proceedings; likewise the Magistrate exercising jurisdiction under Section 145 Cr.P.C. cannot withdraw the proceedings upon the application given by a party to it rather it can do so only after his subjective satisfaction; and the parties have no independent right.

- (8) So far as the second question is concerned as to what will be the effect of pending suit or consolidation proceedings upon ongoing 145 Cr.P.C. proceedings, while passing this judgment, this Court has noticed that Writ Petition No.1926 of 1984 is pending before this Court. This writ petition has been filed by respondent no.1-Anil Kumar regarding the same property wherein vide interim order dated 30.11.1995, respondent no.4 has been restrained from either alienating or changing the property in question. It has been averred in the affidavit filed in support of the revision that before the Court of Consolidation Officer, Settlement Officer of Consolidation, Deputy Director of Consolidation, respondent no.1-Anil Kumar has lost his case. Aggrieved by order of Deputy Director of Consolidation, it appears that he has filed writ petition. It has been further averred in the affidavit that during pendency of the writ petition, Shri Jaikaran Lal, respondent no.4 of the writ petition, has died and in his place Shri Jitendra Kumar (revisionist herein) has been substituted. Therefore, it appears from the record that a civil dispute for possession or declaration of the

title in respect of the same property is pending adjudication before this High Court.

- (9) Hon'ble Supreme Court in the case of **Amresh Tiwari vs. Lalta Prasad Dubey and another** reported in (2000) 4 SCC 440 relying on the ratio of Ram Sumer's case (1985 SCC (Cri) 98) has held that where civil suit for possession or declaration of the title in respect of same property is pending, the proceedings under Section 145 Cr.P.C. are liable to be discontinued. The relevant part of para 14 of the Amresh Tiwari's judgement is extracted below:-

"We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate."

- (10) In view of the aforesaid settled law, since the proceedings regarding possession or declaration of the title in respect of the same property are pending under the Consolidation of Holdings Act before this Court, wherein question of title adjudicated by the Consolidation Courts, namely, Consolidation Officer, Settlement Officer of Consolidation and Deputy Director of Consolidation is to be adjudicated, it will not be proper to allow

the proceedings under Section 145 Cr.P.C. to continue at this stage.

(11) The proceedings under Section 145 Cr.P.C. are directed to discontinue as the respective claim of the parties regarding title or possession shall be determined as per the outcome of the writ petition No. 1926 of 1994 (Cons.) pending before this Court.

(12) The revision stands **disposed of**.

Order Date :-31.3.2022

Madhu